

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

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Re: ***State of Delaware v. Amy Hammond***
ID 0911004141

Upon Defendant's Motion for Postconviction Relief. Denied.

Submitted: August 3, 2011
Decided: September 27, 2011

Dear Counsel:

I have received Defendant Amy Hammond's motion for postconviction relief, as well as affidavits and submissions from the State and prior defense counsel. For the following reasons, Defendant's motion is denied.

Facts. Between September 25, 2009 and October 30, 2009, numerous theft-related incidents occurred near Clarksville and Millville in Sussex County, Delaware. As part of their investigation, Delaware State Police obtained two search warrants. One search warrant was for the home of David Pierce, which was never executed because the house

appeared to be unoccupied. The second search warrant was for the home of Ruth Braun, Defendant's grandmother. No evidence against Defendant was obtained as a result of this search.

When the investigation was complete, the police arrested Defendant Hammond, her husband Zachary Hammond and David Pierce as co-conspirators in committing these crimes. Defendant and her husband were found at his mother's house, asleep in one of the bedrooms. Defendant was awakened, and officers did a proximity search for weapons. On the bed they saw drug paraphernalia, which was seized. Upon request, Defendant told them where the hypodermic syringes were located. She was taken outside. An audio-recorder was used when she was given her *Miranda* rights. She confessed her involvement in the crimes. She was placed in an officer's car and consented to her vehicle being searched. She acknowledged that items found in her car were stolen from area vehicles.

Posture. On March 17, 2010, Hammond entered a guilty plea to two counts of Possession of Burglary Tools, one count of Forgery 1, one count of Conspiracy 2, one count of Theft misdemeanor and one count of Possession of Drug Paraphernalia. In turn, the State dropped six felony charges and seven misdemeanor charges against her.

Hammond could have received up to 12 years of Level 5 incarceration. Through counsel, she requested three years at Level 5 suspended after completing the Village Program, to be followed by probation. This Court followed the sentencing

recommendation.

Hammond was sentenced as follows. On the first count of possession of burglar's tools, Hammond received three years at Level 5 suspended following successful completion of the Key/Village Program to 18 months of Level 3 aftercare. On the second charge of possession of burglar's tools, she received three years suspended for one year at Level 1. On the conspiracy charge, she received two years at Level 5, suspended for one year at Level 3. On the misdemeanor theft charge, she received one year at Level 5, suspended for one year at Level 3 concurrent. On the possession of drug paraphernalia she received one year at Level 5, suspended for one year at Level 3.

Hammond was terminated from the Key/Village program in January 2011. She filed a motion for sentence modification, which was denied. On March 9, 2011, she filed her first postconviction relief motion.

Discussion. Defendant raises eight grounds for relief premised on prior counsel's failure to discuss certain issues with her. Defendant states that "[a]t a minimum, these issues should have been discussed with the defendant and she should have had the opportunity to make a decision as to whether a motion to suppress should have been filed. That was not done. Thus, defendant's motion postconviction relief should be granted."¹ That statement calls for two observations. First, Defendant misstates the *Strickland* standard. Second, defendant has not indicated what form of relief she is seeking. That is,

¹Defendant's submissions are not numbered. The quotation is found on the second page of Defendant's reply.

her submissions do not state whether she is now ready to go to trial with current counsel or whether she seeks exoneration.

To prevail on an ineffective assistance of counsel claim in the context of a guilty plea, a defendant must show that defense counsel's performance fell below an objective standard of reasonableness and that, but for counsel's deficiencies, there is a reasonable likelihood that defendant would not have pled guilty, but would have gone to trial.² Counsel's performance is entitled to a strong presumption of reasonableness.³ On an ineffectiveness claim, the defendant must affirmatively prove prejudice.⁴

Suppression motion. Defendant argues first that her prior attorney failed to file a suppression motion, but fails to say what should have been suppressed or why. As the State observes, Defendant has not alleged any factual basis to support her claim that a suppression motion should have been filed. Defense counsel avers that he reviewed all the evidence with Defendant and explained to her the viable options.

In light of Defendant's unidentified suppression issue, phrased in generic and conclusory terms, and also in light of prior counsel's affidavit, this claim fails both prongs of *Strickland*.

Search warrant application and warrant for 32419 Echo Street, Frankford.

²*Hill v. Lockhart*, 474 U.S. 52, 57-60 (1985).

³*Flamer v. State*, 585 A.2d 736, 753-54 (Del. 1990).

⁴*Strickland v. Washington*, 466 U.S. 668, 693 (1984).

This is the address of Ruth Braun, Defendant's grandmother. Defendant had moved out of her grandmother's home only a few days prior to the search of the home. Defendant argues that the application lacks probable cause because it shows no nexus between the location to be searched and any crime. The State argues that the search yielded no evidence against Defendant and that she had nothing to gain by filing a suppression motion.

Prior defense counsel states that the officers found nothing of evidentiary interest in the house. With Ms. Braun's consent, they searched the shed and seized a wallet, head phones and a note pad. None of these proved useful. Thus, the determinative fact is that nothing was seized that had evidentiary value and there was nothing to be suppressed. This claim has no basis in law or in fact.

This result also applies to Defendant's claims that the warrant was over broad; that the search went beyond the scope of the warrant; the search was over broad in that the warrant did not include the shed; that police knew Defendant had moved out of her grandmother's residence prior to the search, in violation of *Franks*⁵; and that following the warrant application, the affiant may have doubted that Hammond was the woman caught on the surveillance video (which she was not) again in violation of *Franks*.

If evidence had been seized and used against Defendant, the Court would examine

⁵*Franks v. Delaware*, 438 U.S. 154, 155-56 (1978) (listing two requirements for challenging search warrant: substantial preliminary showing that false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit and that the statement was necessary to finding of probable cause).

each claim. However, that did not happen. Even Defendant cannot make these arguments without asserting that prior counsel should have discussed these issues with Defendant. There is no requirement, anywhere, that a defense attorney must discuss futile claims with a client.

Defense counsel was not ineffective for not filing motions regarding evidence that did not exist. Nor did Defendant suffer prejudice from the lack of such motions. As grounds for ineffective assistance of counsel, these claims border dangerously close to being frivolous. Each of these claims is denied.

Proximity search. Defendant was arrested at her husband's mother's house, where the two were found asleep in a bedroom. Police did a proximity search for weapons. Laying on top of the bed were a glass pipe, a pill crusher and a bowl containing marijuana. These items were seized. When asked, Defendant directed officers to the location of hypodermic needles.

Defendant now argues that defense counsel should have discussed with her the issues of *Miranda* warnings, voluntary consent after being wakened and consent to search Defendant's vehicle. The items on the bed were in plain view and lawfully seized. Even assuming that Defendant was too sleepy to give a knowing and voluntary answer about the hypodermic needles, the drug paraphernalia found on the bed was sufficient for the charge of possession of drug paraphernalia. Defendant's *Miranda* warnings were audio-recorded, and there is no basis for an argument against the vehicle search, which revealed

items which Defendant admitted were stolen.

For all these reasons, Defendant's motion for postconviction is **DENIED**.

Very truly yours,

Richard F. Stokes

cc: Prothonotary